

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
CLERK

2012 JUN -1 PM 4:09

JESSIE BRACKETT on Behalf of Himself and
all Others Similarly Situated,

Plaintiff,

v.

DR. JACOB ROSENSTEIN, and NAC
MARKETING COMPANY, LLC d/b/a NEW
VITALITY,

Defendants.

Civil Action No.

U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

CLASS ACTION COMPLAINT

CV 12-2775

JURY TRIAL DEMANDED

SUMMONS ISSUED

WEXLER, J

WALL

Plaintiff Jessie Brackett (the "Plaintiff"), by his attorney, makes the following allegations pursuant to the investigation of his counsel and based upon information and belief, except as to allegations specifically pertaining to himself and his counsel, which are based on personal knowledge.

NATURE OF THE ACTION

1. This is a class action lawsuit against NAC Marketing Company, LLC d/b/a New Vitality ("Company" or "New Vitality") and Dr. Jacob Rosenstein ("Rosenstein," collectively with New Vitality, "Defendants") arising out of the sale of its "Ageless Male" testosterone boosting supplement. Defendants market Ageless Male as a "one of a kind" natural testosterone-boosting supplement "clinically proven" to dramatically increase testosterone levels in men by upwards of 50%.

2. Defendants' representations are false, misleading, and unsubstantiated. Ageless Male, and the proprietary blend ingredients contained therein, does not significantly boost testosterone levels in men. Moreover, there is no competent and reliable scientific evidence to

support any of these claims. Defendants have perpetrated this hoax on thousands of consumers, including a significant number of older men who are prone to normally decreasing testosterone levels, through a massive advertising campaign, including internet, television, and radio.

3. Defendants' hoax involves numerous unsubstantiated, false and misleading statements concerning Ageless Male which have injured Plaintiff and the Class by inducing them to purchase a worthless, unproven product. As a result, Defendants are guilty of deceptive conduct in their marketing and sale of Ageless Male.

4. Plaintiff seeks relief in this action individually, and as a class action on behalf of all persons in the United States who, within the relevant statute of limitations period, purchased Ageless Male, for Defendants' violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et. seq.*, breach of express warranty, breach of implied warranty of merchantability, for unjust enrichment, common law fraud, violations of New York's General Business Law § 349, *et seq.*, New York's General Business Law § 350, *et seq.*, and the consumer fraud statutes of the remaining states.

THE PARTIES

5. Plaintiff is a citizen of Alabama. Within the class period, Plaintiff purchased Ageless Male from New Vitality for his personal use after hearing and/or viewing Ageless Male advertisements, including but not limited to radio advertisements. This transaction between Defendants and Plaintiff occurred in New York after Plaintiff placed a call to the New Vitality call center in New York.

6. Defendant New Vitality is a Delaware limited liability company with its principal place of business located at 260 Smith Street, Farmingdale, New York, 11735. New Vitality creates, advertises, and sells a wide variety of vitamin supplements, including Super Beta Prostate, ProRadiance, CocoPure, Royal Greens Ultra, Multivescence, Ruby Reds, Numatone,

and Ageless Male. New Vitality represents that it offers “the most groundbreaking formulas.” New Vitality directly markets its products, including Ageless Male, through internet, television, and radio from its headquarters in Farmingdale, New York. Additionally, New Vitality conducts television production, print advertising, web marketing, radio production, call center operations, media buying, order fulfillment, information technology and data management, and graphic design, as well as customer and creative services from this same location. Ageless male is only available for direct purchase from New Vitality’s New York headquarters.

7. Defendant Rosenstein, upon information and belief, is a resident of Texas. Rosenstein is a neurosurgeon and is also purportedly trained in the field of “age management medicine.”¹ Rosenstein serves as a product spokesperson for Ageless Male. Additionally, Rosenstein serves as a spokesman for several other “age management” related ventures, including the Southwest Age Intervention Institute, Cenegenics Medical Institute, and the Rosenstein Center for Youthful Aging. Rosenstein personally made many of the false and misleading representations set forth herein, appearing in numerous radio, web, print, and television advertisements directed at consumers nationwide and to consumers specifically in this district.

8. At all relevant times, each Defendant acted in concert with, with the knowledge and approval of and/or as the agent of the other Defendant within the course and scope of the agency, regarding the acts alleged herein.

¹ Age management medicine is a field of medicine focused on proactive, preventative healthcare with the goal of controlling the aging process. Age management medicine focuses on the prevention of aging through nutrition, exercise, supplements, and hormone optimization. <http://www.cenegenics.com/about-cenegenics.php> (5/31/2012).

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question). This Court has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

10. This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because there are more than 100 class members and the aggregate amount in controversy exceeds \$5,000,000.00, exclusive of interest, fees, and costs, and at least one Class member is a citizen of a state different from Defendants.

11. The Court has personal jurisdiction over Defendants in that New Vitality is a citizen of and maintains its principal headquarters in New York and that Defendants' false and misleading statements at issue in this case emanated from New York.

12. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) and (c) because a substantial part of the events and acts giving rise to the claims herein occurred in this District and because New Vitality's principal place of business is located in Farmingdale, New York.

FACTS COMMON TO ALL CAUSES OF ACTION

A. Testosterone And Andropause

13. Testosterone is the principal male sex hormone and an anabolic steroid. Testosterone plays a large role in the health and well-being of men by maintaining sperm production, sex drive, muscle mass, and bone density. It is the hormone that is primarily responsible for producing and maintaining the typical male characteristics such as body and facial hair, muscle growth, and strength. Maintaining normal testosterone levels in elderly men has been shown to improve parameters which are thought to cause cardiovascular disease risk, such as increased lean body mass, and decreased cholesterol. Testosterone is also important for sustaining mental and physical energy.

14. Testosterone is produced mostly in the testes and a small amount of testosterone is produced from steroids secreted by the outer layer of the adrenal glands, also known as the adrenal cortex.

15. Testosterone primarily circulates in the blood of men in three types or forms. Most of the testosterone in the blood is bound to a protein called sex hormone binding globulin (“SHBG”). Testosterone is also bound to another protein called albumin. Testosterone that is not bound is considered “free.”

16. The body carefully controls the production and regulation of testosterone. Chemical signals from two locations – the pituitary gland at the base of the brain, and a part of the brain called the hypothalamus – tell the testes how much testosterone to produce. The hypothalamus controls hormone production in the pituitary gland by means of gonadotropin-releasing hormone (“GnRH”). This hormone tells the pituitary gland to make follicle-stimulating hormone (“FSH”) and luteinizing hormone (“LH”). LH signals the testes to produce testosterone. If the testes begin producing too much testosterone, this is sensed by the brain which sends signals to the pituitary to make less LH. This, in turn, slows the production of testosterone. If the testes begin producing too little testosterone, the brain senses this and sends signals to the pituitary gland telling it to make more LH, which stimulates the testes to make more testosterone.

17. Furthermore, as men age, their ability to produce total, free, and bioavailable testosterone (i.e., not bound by SHBG) gradually declines. This is due to a number of factors. For example, some men’s production of LH decreases with aging, which lowers testosterone production. Moreover, the protein that binds up and holds onto testosterone, SHBG, increases in older men. This reduces the amount of free (unbound) testosterone in the blood that is available

to tissues, such as muscles. Aging also causes changes in the daily cycle of testosterone production. For example, younger men show a spike or peak of testosterone levels in the morning, but this peak is reduced in older men.

18. Andropause is a term frequently used to describe this natural and subtle decline in testosterone production in men as they age. The most common symptoms of andropause include diminished sexual desire and erectile quality, low fertility rates, fatigue, depression, anxiety, irritability, increased body fat, and loss of strength and muscle mass. Complications associated with andropause also include risk of cardiovascular problems and osteoporosis.

19. It is estimated that the incidence of andropause in men from ages 50 to 59 is between 6% and 30%, with incidence increasing with age.

20. According to a 2006 study published in the International Journal of Clinical Practice, as many as 13.8 million men older than 45 in the United States have low levels of testosterone.

21. Medically diagnosed low testosterone levels are most often treated with a hormone replacement therapy, specifically testosterone replacement therapies ("TRT's"), which are prescribed to improve both physical and psychological functioning. Although the FDA has approved certain TRT treatments or drugs for purposes related to diseases and deficiencies, it has not done so to combat aging.

22. TRT's regimens may only be conducted under the supervision of a licensed physician and require careful monitoring of hormone levels. TRT can consist of various forms of the hormone using delivery systems including patches, gels, creams, injections, or pellets.

23. TRT treatments, however, have a number of undesirable side effect and dangers. For example, prolonged use of any testosterone delivery system may result in breast enlargement

or increased risk of prostate enlargement or cancer in older men. Additionally, patients with preexisting heart, kidney, or liver disease may experience fluid accumulation with or without heart failure. Moreover, men with breast cancer or known or suspected prostate cancer should not receive testosterone therapy at all as it may increase the risks associated with those conditions.

24. Despite the risks, TRT treatments have seen a dramatic rise in use as the baby boomer generation, which accounts for about 30% of the U.S. population, is beginning to feel the natural effects of low testosterone levels. In fact, treatments for low testosterone have exploded in the U.S., amounting to \$1.6 billion in sales in 2011 alone according to data compiled by *Bloomberg*. Sales are expected to triple to \$5 billion by 2017, according to Global Industry Analyst, Inc.

B. Defendants Capitalize On The Billion Dollar TRT Market

25. In an effort to capitalize on the booming TRT market, Defendants began to market Ageless Male as a “one of a kind” all natural testosterone supplement designed to “fight back” against the natural reduction in testosterone levels that “every man will experience” as he ages.

26. Ageless Male is sold directly to consumers from New Vitality’s New York headquarters through its customer service telephone line and its numerous websites, including but not limited to: <http://buyagelessmale.com>; <http://www.agelessmale.com>; <http://www.myagelessmale.com>; and <http://www.newvitality.com>.

27. Defendants directly market Ageless Male to consumers throughout the United States from New Vitality’s headquarters in Farmingdale, New York. The online and telephone ordering process, which is also based out of its New York headquarters, requires that consumers

provide their credit card information up front which New Vitality uses to immediately charge the consumer's credit card and the transaction is completed in New York.

28. Sales of the Ageless Male product are supported by New Vitality's massive nationwide internet, radio, print and television advertising campaign. Defendants' representations about the product are consistent across these various media, which claim that the product is proven to dramatically boost testosterone levels.

29. According to Defendants' representations, as a result of this purported boost in testosterone, users of Ageless Male will experience "profound differences" in their lives, including: strong bones, increased drive and concentration, better or more positive mood, reduced body fat, easier muscle building, and improved libido or sex drive.

30. Additionally, Defendants have promoted both versions of Ageless Male as an alternative to prescribed TRT treatments. For example, since Ageless Male is all natural, "no injections, no gels," Defendants claim there are no significant and serious side effects to deal with. Moreover, "it doesn't require a prescription."

31. Ageless Male previously consisted of 800 milligrams of a proprietary blend of saw palmetto berry extract from *Serona repens* ("Saw Palmetto") and carotenoid astaxanthin from *Haematococcus pluvialis* ("Astaxanthin"). Saw Palmetto is a berry extract which has been used medicinally in traditional, eclectic, and alternative treatments. Astaxanthin is a purported antioxidant that gives salmon and cooked shellfish its reddish color, and the FDA has approved it as a food coloring for animal food. According to Defendants, the precise ratio of Saw Palmetto to Astaxanthin (the ratio is undisclosed) was what gave Ageless Male its testosterone boosting effect. Moreover, based "human research" this precise combination was found to "raise men's testosterone an astonishing 61%."

32. In the Spring of 2012, Defendants swapped out the Ageless Male formula for a new one. The primary ingredient in the new formula is Testofen, a trade name for fenugreek seed extract produced by Gencor Pacific, Inc. Fenugreek seeds are often used as a spice in India and fenugreek extract is an ingredient commonly found in numerous male sexual enhancement products. Below is a comparison of the two formulas:

<u>Old Formula</u>	<u>New Formula</u>																				
Supplement Facts Serving Size: 2 softgels Servings Per Container: 30 <table> <tr> <th>Amount Per Serving</th><th>%Daily Value</th></tr> <tr> <td>Calories 10</td><td></td></tr> <tr> <td>Calories from Fat 10</td><td></td></tr> <tr> <td>Total Fat 1 g</td><td>.</td></tr> <tr> <td>Ageless Male proprietary blend saw palmetto berry extract (85-95% fatty acids) and astaxanthin</td><td>800 mg **</td></tr> </table> <p>* Percent Daily Value is Based upon a 2,000 calorie diet. ** Daily Value not established.</p> <p>Other Ingredients: Glycerin, water, gelatin.</p>	Amount Per Serving	%Daily Value	Calories 10		Calories from Fat 10		Total Fat 1 g	.	Ageless Male proprietary blend saw palmetto berry extract (85-95% fatty acids) and astaxanthin	800 mg **	Supplement Facts Serving Size: 1 softgel Servings Per Container: 60 <table> <tr> <th>Amount Per Serving</th><th>%Daily Value</th></tr> <tr> <td>Vitamin B6 (as pyridoxine HCL)</td><td>4.94 mg 247%</td></tr> <tr> <td>Magnesium (as magnesium oxide)</td><td>16.88 mg 4%</td></tr> <tr> <td>Zinc (as zinc oxide)</td><td>15 mg 100%</td></tr> <tr> <td>Testofen® (standardized fenugreek seed extract)</td><td>300 mg *</td></tr> </table> <p>* Daily Value not established.</p> <p>Other Ingredients: Soybean oil, gelatin, glycerin, soy lecithin, purified water, bees wax, annatto, caramel. Testofen® is a Registered Trademark of Gencor Pacific Inc</p>	Amount Per Serving	%Daily Value	Vitamin B6 (as pyridoxine HCL)	4.94 mg 247%	Magnesium (as magnesium oxide)	16.88 mg 4%	Zinc (as zinc oxide)	15 mg 100%	Testofen® (standardized fenugreek seed extract)	300 mg *
Amount Per Serving	%Daily Value																				
Calories 10																					
Calories from Fat 10																					
Total Fat 1 g	.																				
Ageless Male proprietary blend saw palmetto berry extract (85-95% fatty acids) and astaxanthin	800 mg **																				
Amount Per Serving	%Daily Value																				
Vitamin B6 (as pyridoxine HCL)	4.94 mg 247%																				
Magnesium (as magnesium oxide)	16.88 mg 4%																				
Zinc (as zinc oxide)	15 mg 100%																				
Testofen® (standardized fenugreek seed extract)	300 mg *																				

33. When Defendants were selling the old formula, they criticized fenugreek-based products as less effective than their proprietary blend of Saw Palmetto and Astaxanthin, and claimed that their competitor's products containing fenugreek were all alike. In fact, Defendants felt compelled enough to post a "warning" on their website with a message titled "The Truth About Other Testosterone Products!" noting the disparity between Ageless Male and other products. Now that Ageless Male contains the exact same ingredient that they previously criticized, Defendants laud the testosterone boosting power of fenugreek and claim that its effectiveness is proven by clinical testing:

<u>Old Formula</u>	<u>New Formula</u>
<p>It seems like every day a new testosterone product pops up and promises the world. But when you dig a little deeper and actually read their labels, you'll discover the shocking truth; most of these products are nearly identical!</p> <p>So many products rely on an ingredient called fenugreek, along with a few "filler" ingredients. These formulas work to a point, but if you want to boost your testosterone a full 61%, only Ageless Male has the ingredients clinically proven to do so.</p>	<p>It seems like every day a new testosterone product pops up and promises the world. But when you dig a little deeper and actually look for the research, you'll discover the shocking truth: most of these products fall flat!</p> <p>Ageless Male is made with a natural and clinically tested ingredient backed by research. A double blind, randomized, placebo controlled human clinical study on this active ingredient has shown it can significantly help boost free testosterone in men within safe, healthy levels</p>

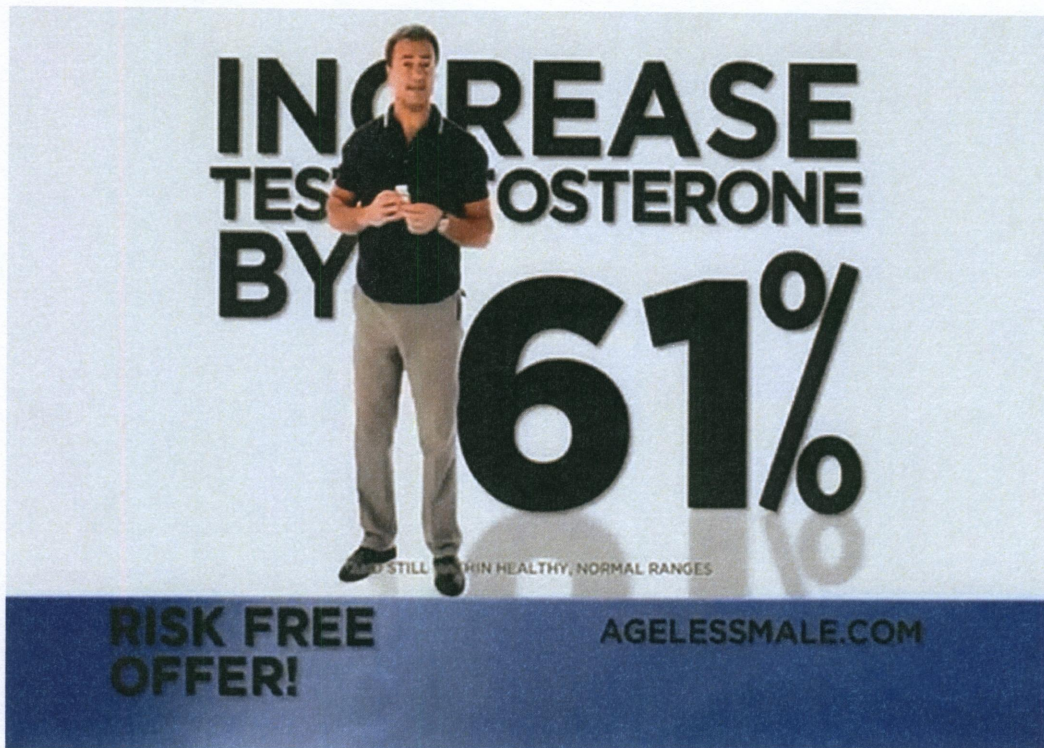
34. Ageless Male is sold in: (a) a one-month supply, which costs \$39.95 plus shipping and handling; (b) a 90 day supply for \$79.90 plus shipping and handling, and (c) a 180 day supply for \$159.80 plus shipping and handling.

C. False And Misleading Marketing Of Ageless Male

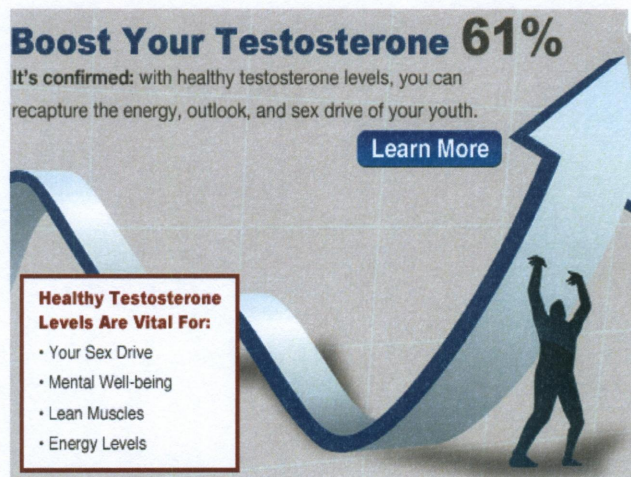
1. Unsubstantiated Efficacy Claims

35. Defendants have engaged in a massive, uniform marketing and advertising campaign designed to convince aging consumers that Ageless Male naturally and dramatically boosts testosterone levels. Defendants then disseminated materially false and misleading statements which represent, both expressly and by implication, that scientific clinical tests prove that Ageless Male will dramatically boost testosterone levels. These false and misleading statements were disseminated in advertising, marketing, and promotional materials designed to induce consumers to purchase Ageless Male through the internet, television infomercials, and radio advertisements.

36. For example, Defendants tout in numerous television commercials, website promotions, and infomercials that Ageless Male is "clinically" proven to dramatically increase testosterone levels by 61%:



<http://www.agelessmale.com/why-ageless-male.aspx>. (2/2/2012).



www.agelessmalereviews.co (2/6/2012).

37. Similarly, Defendants' website touts the benefits of the Ageless Male testosterone booster:

The Wisdom of Years...the Vitality of Youth Men, have you been losing muscle size and strength while gaining more body fat? How about a low sex drive? And

your state of mind? Are you more irritable, moody? If you're having these symptoms you could be suffering from a drop in testosterone. Low testosterone is very common as you age but now you can do something about it. **Ageless Male is an all natural testosterone supplement clinically demonstrated to increase testosterone levels by 61%**, but still within a normal healthy range. Ageless Male testosterone booster may also help reduce the harmful hormones like DHT and estradiol that build up in a man's body over time. With Ageless Male you can support healthy hormonal balance. Give your testosterone levels a boost naturally. Ageless Male does not require injections, gels or appointments.

www.newvitality.com/exit box/ageless-male.aspx (5/22/2012) (emphasis added).

38. Moreover, the Frequently Asked Questions ("FAQ") section on one of the Company's websites states:

Q. Why should I consider Ageless Male?

A. The ingredient in Ageless Male has been shown in a published human study to help increase testosterone levels by 61%, yet still within a safe, healthy range. Ageless Male is an all-natural testosterone supplement and was shown in research to be safe without significant side effects. In fact, Ageless Male has been shown to lower problematic hormones in men such as DHT and estradiol.

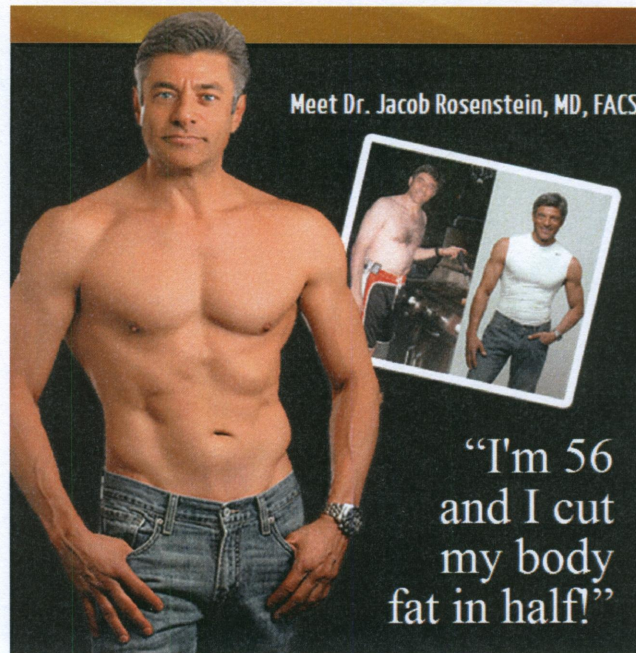
Q. What can I expect Ageless Male to do for me?

A. In the published human study, the ingredient in Ageless Male helped increase testosterone levels by 61%, while still staying within the normal range. This boost in testosterone may help support a healthy sex drive, energy production, positive mood and lean muscle mass.

www.agelessmale.com/faq (12/6/2011) (emphasis added).

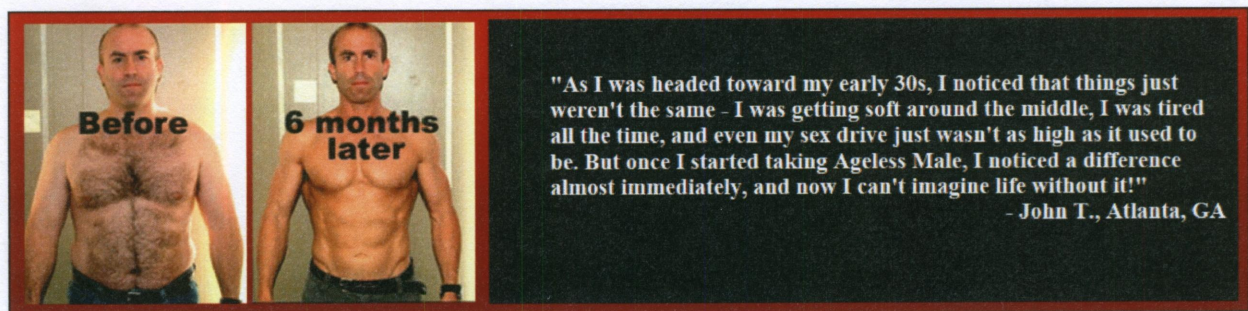
39. Furthermore, many of the advertisements feature Defendant Rosenstein, who refers to Ageless Male as "a game changer" for men. These advertisements note that with the recent surge of testosterone supplements on the market, Rosenstein, a neurosurgeon, has found that only Ageless Male is clinically proven to raise testosterone by 61%. These advertisements also state that Rosenstein has seen the results of Ageless Male firsthand and he cut his body fat in half. The advertisements further state that Rosenstein now gets more out of his workouts, and he has more energy and more drive. A screenshot captured from Defendant's website featuring

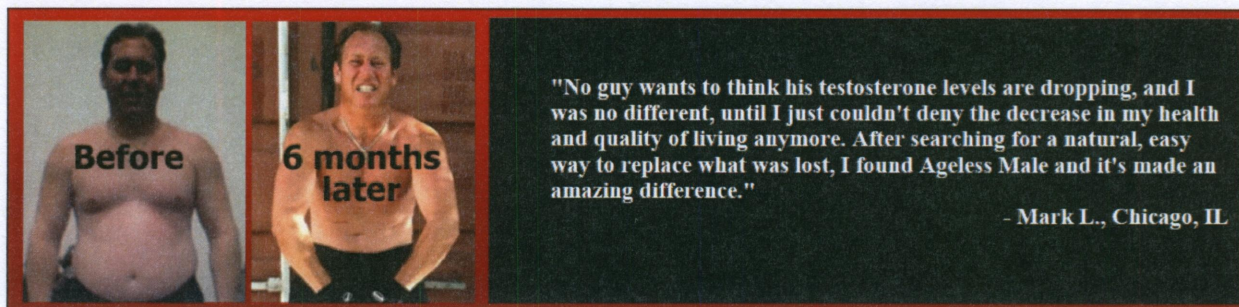
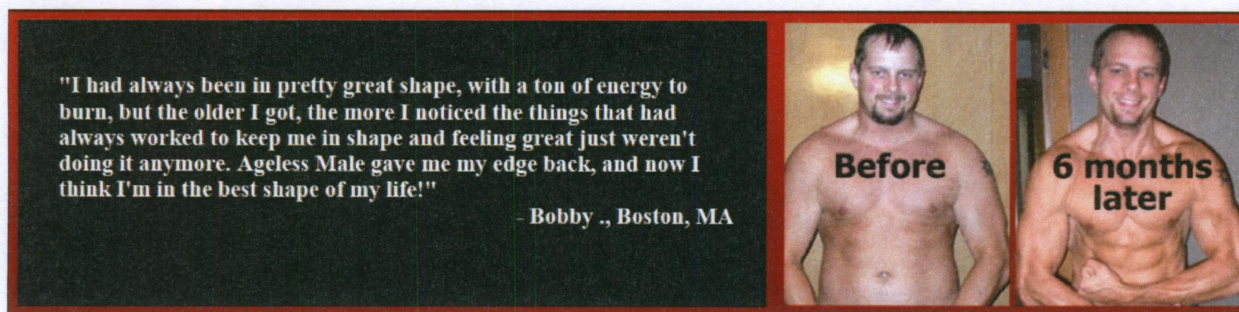
photographs, including before and after shots, of Defendant Rosenstein with the caption “REAL RESULTS” are provided below:



<http://www.myagelessmale.com/> (12/6/2011).

40. Similarly, Defendants have also included client testimonials touting the purported “Real Results” obtained as a result of taking Ageless Male. These testimonials contain before and after photographs of Ageless Male users who appear to have dramatically transformed their physiques over a six month interval. None of the advertisements, however, disclose whether the results are typical:





www.agelessmalefreetrial.com (5/22/2012).

41. Moreover, Defendants claim that as a result of this purported boost in testosterone, users of Ageless Male will experience "profound differences" in their lives, including: strong bones, increased energy, drive and concentration, better or more positive mood, reduced body fat, easier muscle building, and improved libido or sex drive. For example, the Company's website states:

In the published human study, the ingredient in Ageless Male helped increase testosterone by 61%, whose still staying within normal ranges. This boost in testosterone may help support a healthy sex drive, energy production, positive mood and lean muscle mass.

www.agelessmale.com/faq (12/6/2011).

42. Similarly, New Vitality's website states:

Ageless Male -
Testosterone Supplement

All natural dietary supplement clinically prove to increase testosterone levels by 61%, but still within a normal healthy range

Ageless Male Helps Support Normal Testosterone Levels, Which in Turn, Helps Support:

- Healthy Sex Drive*
- Energy Production*
- Positive Mood*
- Lean Muscle*
- Strong Bones*
- Concentration*
- More Zest for Life!

www.newvitality.com/shop/ageless-male.aspx (05/23/2012).

43. Each of these claims are unsubstantiated, false and misleading. In fact, there is no competent and reliable scientific evidence demonstrating Ageless Male's ability to dramatically boost testosterone levels. Moreover, there is no competent and reliable scientific evidence to demonstrate that "Ageless Male has been shown to lower problematic hormones in men such as DHT and estradiol."

44. All of Defendants' false and/or misleading claims challenged herein relate to matters that were material and important to consumers' purchasing decision, as they concern the effectiveness of Ageless Male and its ability to dramatically boost testosterone levels.

2. Defendants' Sham Clinical Studies

45. As a further inducement to consumers, Defendants repeatedly represent in their marketing and advertising materials that Ageless Male is "clinically proven" to be effective. For example, with respect to the original formulation of Ageless Male, New Vitality's website states:

**AGELESS MALE –
TESTOSTERONE SUPPLEMENT**

All natural testosterone supplement clinically proven to increase testosterone levels by 61%, but still within a normal healthy range

<http://www.newvitality.com/shop/ageless-male.aspx> (5/23/2012).

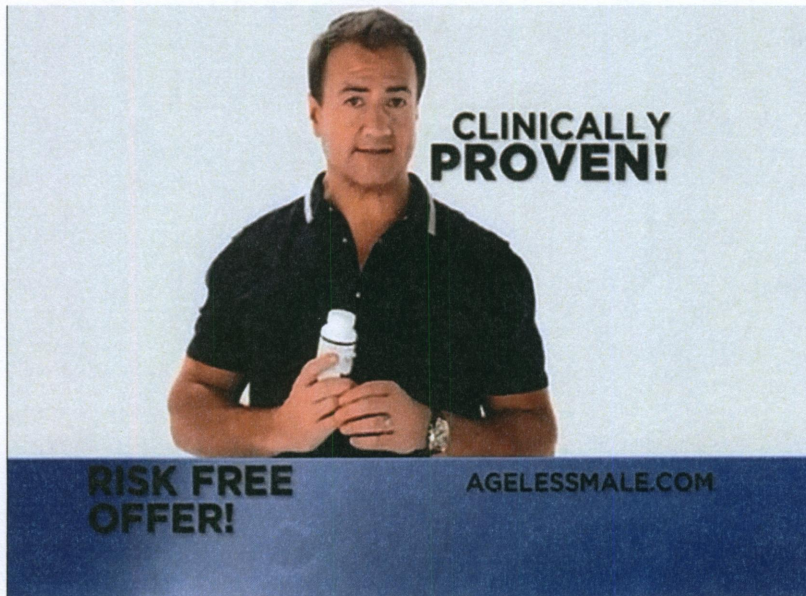
46. Defendants' additional websites, including tryagelessmale.com website also states:

How Does it Work?

Ageless male is made with a proprietary blend of the herb Saw Palmetto, and an antioxidant called Astaxantin. These two special ingredients are fused together in an ultra-specific ratio based on actual human research. In that clinical research, this exact blend was found to boost testosterone levels by 61%. . . .

www.tryagelessmale.com/why-ageless-male.aspx (5/22/2012).

47. Similarly, Defendants tout the original formulation of Ageless Male's "clinically proven" effectiveness in numerous infomercials, television commercial and radio advertisements. A screenshot captured from one of Defendants' commercials is captured below:



<http://www.agelessmale.com/why-ageless-male.aspx> (2/2/2012).

48. However, the claim that Ageless Male's original formulation is clinically proven to dramatically increase testosterone levels is unsubstantiated, false, and misleading. Nowhere on Defendants' websites is a copy of an actual study proving that Ageless Male has been tested for effectiveness. Ageless Male has not been the subject of a competent and reliable scientific study. There is reference to a purported clinical study on Defendants website in the FAQ section which notes that "the human clinical study on Re-Settin was published in the Journal of the International Society for Sports Nutrition." A copy of the actual study, however, is not published in any of Defendants advertising or marketing materials.

49. This purported study Defendants rely on, titled "An open label, does response study to determine the effect of a dietary supplement of dihydrotestosterone, testosterone and estradiol levels in healthy males" was done by Triarco Industries ("Triarco"), the manufacturer of the ingredients contained in the old formula of Ageless Male. Moreover, the study, which was conducted in Cameroon, was funded by Triarco who assisted in the protocol development, clinical supply management and manuscript preparation for the trial. Under Triarco's direction, the study was not a double-blind placebo controlled clinical trial, but rather an open-label, non-randomized, non-controlled study, which at best could be described as a dose-response pilot study. In addition, the small sample of 42 test subjects was not representative of Ageless Male's target market, as all subjects had to have testosterone levels within the normal range for their ages to qualify for the study. Moreover, there were no diet protocol or diet log requirements.

50. The study also fails to support New Vitality's claim that Ageless Male also lowers estradiol. The subjects of the study only showed a statistically significant decrease in blood levels of estradiol when given in doses two and one-half times that found in the recommended

dose of Ageless Male. Thus, the estradiol claim is equally false and misleading and not substantiated.

51. The flaws in the study, however, have not stopped Defendants from claiming that Ageless Male's original formulation is clinically "proven" to "increase testosterone by 61%." Remarkably, in June of 2011, Defendants were claiming that this same study in fact caused a 50% boost in testosterone. For example:

Q. What can I expect Ageless Male to do for me?

A. In the published human study, the ingredient in Ageless Male helped increase testosterone levels by 50%, while still staying within the normal range. This boost in testosterone may help support a healthy sex drive, energy production, positive mood and lean muscle mass.

www.newvitality.com/shop/ageless-male.aspx (06/30/2011) (emphasis added).

52. Similarly, with respect to Ageless Male's new formulation, the Ageless Male website claims:

Ageless Male is made with a standardized extract called Testofen®††, which is a natural and clinically-tested ingredient derived from the fenugreek herb. A double-blind, randomized, placebo-controlled human clinical study on Testofen®†† has shown it can significantly help boost free testosterone in men within safe, healthy levels.

<http://www.agelessmale.com/why-ageless-male.aspx> (5/31/2012).

53. To support this claim, New Vitality cites two purported studies. First, New Vitality refers to "Effect of TESTOFEN on safety, anabolic activity and factors affecting Exercise Physiology. Wankhede et al." which has not yet been published. Secondly, New Vitality cites to "Phytotherapy Research. Published online ahead of print, doi: 10.1002/ptr.3360 'Physiological Aspects of Male Libido Enhanced by Standardized Trigonella foenum-graecum Extract and Mineral Formulation' Authors: E. Steels, A. Rao, L. Vitetta."

54. A review of the summary of the Phytotherapy study, however, reveals that the study reported “*Serum prolactin and testosterone levels remained within the reference range.*” In simple terms, this study reveals that Testofen did not raise testosterone levels. Moreover, according to the study, men who received the Testofen reported greater feelings of sexual arousal, orgasm, libido, well-being, energy and muscular strength, but no change in mood was reported. No explanation was given for the fact that the men in the study reported no change in mood, yet they reported better “well-being.” Additionally, this study did not directly measure strength or energy levels; rather, the men just reported that they felt stronger and had more energy.

55. Regardless, each of these claims is unsubstantiated, false and misleading. In fact, there is no competent and reliable scientific evidence that demonstrates Ageless Male’s ability to dramatically raise testosterone levels.

56. All of Defendants false and/or misleading claims challenged herein relate to matters that were material and important to consumers’ purchasing decision, as they concern the effectiveness of Ageless Male and its ability to dramatically boost testosterone levels.

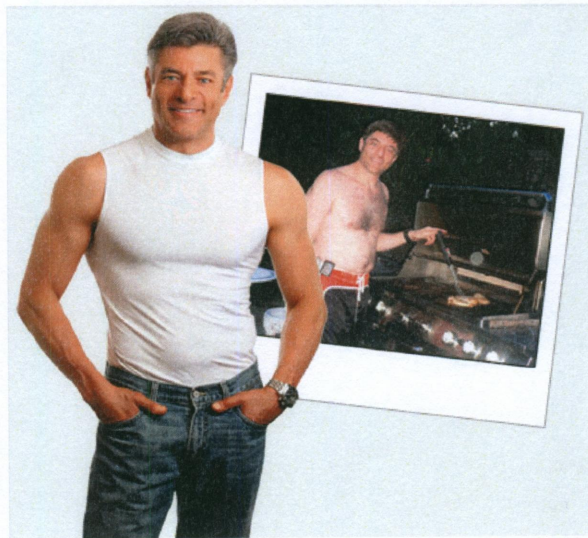
3. Defendant Rosenstein Peddles New Vitality’s Unproven Miracle Cure

57. To promote its scheme, Defendant New Vitality utilizes the endorsement of Defendant Rosenstein, a 55 years old² baby boomer and doctor, who purportedly discovered this miracle, clinical breakthrough. Rosenstein personally appears on numerous advertisements and promotional material, including the “The Story of an Ageless Male” section on an Ageless Male website which describes Rosenstein’s life pre-Ageless Male: “At age 51, Dr. Rosenstein’s physique was what you might describe as pretty average. He weighed 166 pounds, and he had 20.3% body fat.” When Rosenstein decided to make a life change by eating better and

² Note that various websites list him as 56.

exercising, he did not achieve the results he was looking for because “even with this healthy lifestyle, you can’t avoid Andropause.” (Emphasis in original). The website continues, “[s]ure, he was adding years to his life and his drop in testosterone may have not been as dramatic as the average man’s ... but you still can’t outrun this [decreasing testosterone] life process. He had to work harder just to keep the muscle from turning to fat; twice as hard as someone in their 30s would have to train.”

58. Defendants claim that Rosenstein then discovered a “clinically proven way to increase testosterone levels by 61% - naturally.” Moreover, after Ageless Male entered Rosenstein’s life, he cut his body fat in half. Reproduced below is a before and after picture displayed on “The Story of an Ageless Male” website.



<http://www.agelessmale.com/about-dr-jacob-rosenstein.aspx> (5/22/2012).

59. Similar if not identical advertisements appear on additional websites:



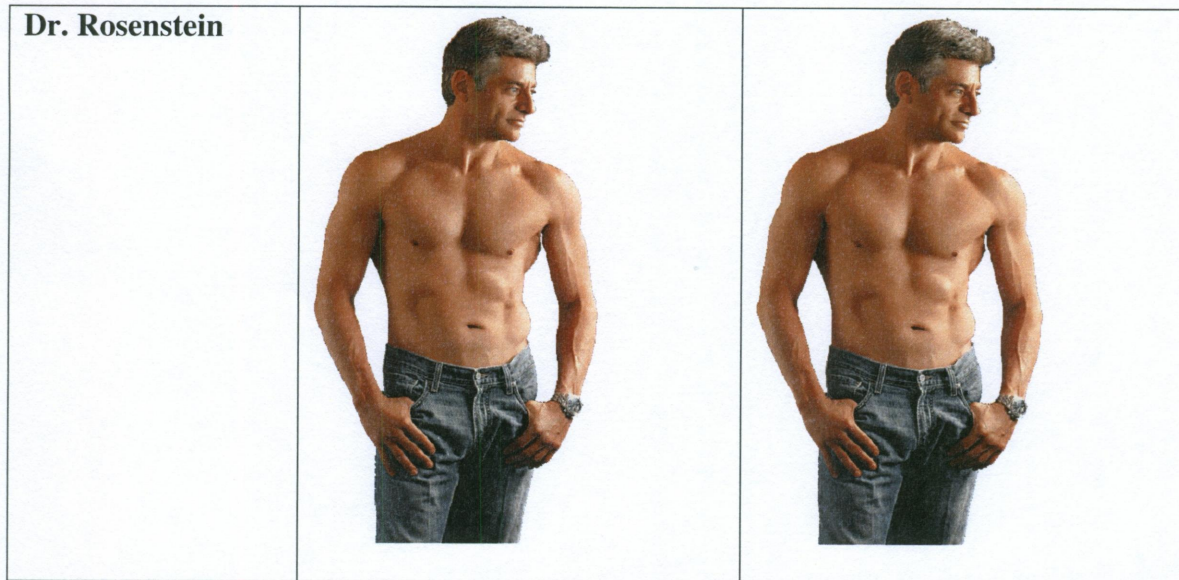
<http://www.buytvooffer.com/tag/ageless-male-commercial/> (5/22/2012);

www.buyagelessmale.info/andropause-casues-symptoms-treatment/ (5/22/2012).

60. Rosenstein continues to claim that his body transformation was the result of Ageless Male, even after Defendants changed the main ingredient in Ageless Male from a proprietary blend of Saw Palmetto and Astaxantin to Fungagreek. Below is a chart comparing Rosenstein's representations:

	Old Formula	New Formula
Representations	Dr. Rosenstein calls Ageless Male "a game changer" for men. He believes it will change the way we live, the way we work, and the way we play. And he's seen the results firsthand: after healthy life choices and Ageless Male, his body fat is now 11.9% (half	Dr. Rosenstein calls Ageless Male "a game changer" for men. He believes it will change the way we live, the way we work, and the way we play. After healthy life choices and Ageless Male, his body fat is now 11.9% (half what it used to be), and he weighs 161 beefy

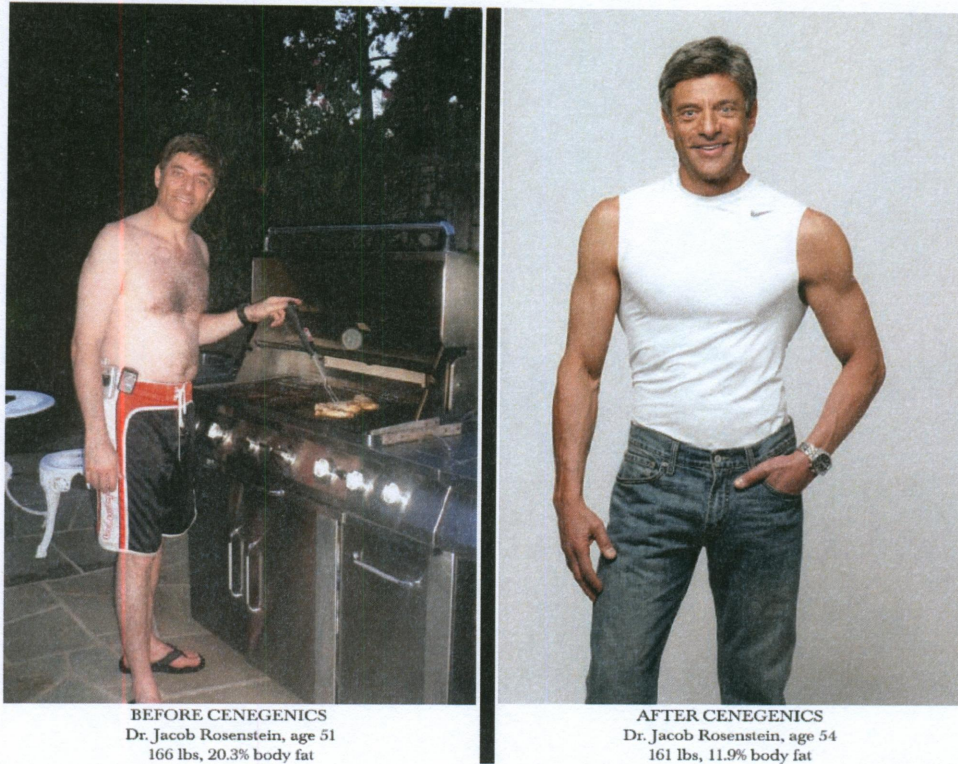
	<p>what it used to be), and he weighs 161 beefy pounds. He's now 54 and in the best shape of his life.</p> <p>Ageless Male is easy: it involves taking 2 small softgels daily. Ageless Male is not a prescription, and does not involve injections or gels.</p> <p>When testosterone levels are healthy, men notice a profound difference in their lives: more drive in their life, better mood, less body fat, easier muscle building, and improved sex drive. The results are undeniable.</p> <p>Dr. Jacob Rosenstein specializes in age management and better living. At 51, Dr. Rosenstein's physique was fairly average for his age. He weighed 166 pounds, and he had 20.3% body fat. At the time, he was experiencing what practically every man experiences: a decrease in testosterone. This is not uncommon. After 40, most men witness the results of decreasing testosterone: less muscle and more fat, lower sex drive, and a drop in stamina.</p> <p>Then, Dr. Rosenstein discovered a clinically proven way to increase testosterone levels by 61% - naturally. And this method helps keep levels in a normal, healthy range. It's a simple, natural supplement called Ageless Male.</p>	<p>pounds. He now feels the best he's ever felt.</p> <p>Ageless Male is easy: it involves taking 2 small softgels daily. Ageless Male is not a prescription, and does not involve injections or gels.</p> <p>Dr. Jacob Rosenstein specializes in age management and better living. At 51, Dr. Rosenstein's physique was fairly average for his age. He weighed 166 pounds, and he had 20.3% body fat. At the time, he was experiencing what practically every man experiences: a decrease in testosterone. This is not uncommon. After 40, most men witness the results of decreasing testosterone: less muscle and more fat, lower sex drive, and a drop in energy.</p> <p>Then, Dr. Rosenstein discovered a clinically researched way to help boost testosterone. And this method helps keep levels in a normal, healthy range. It's a simple, natural supplement called Ageless Male. Dr. Rosenstein made Ageless Male a part of his healthy lifestyle and he's never felt better!</p>
--	---	---



61. Rosenstein, however, appears in various advertisements for other services, offering a different explanation for his miraculous youthful physique and energy levels. In fact, many of these advertisements use the same before and after pictures.

62. For example, Rosenstein appears as an endorser of the Cenegenics Medical Institute, which touts itself as the world's largest age management practice. Cenegenics bills itself as a wellness program aimed at limiting and reversing the aging process and the chronic conditions and diseases associated with it. As a result, Cenegenics claims that it has been shown to "decrease the risk of age-related disease, increase energy (physical/sexual), boost sex drive, improve muscle tone, decrease body fat and sharpen thinking." <http://www.cenegenics-clintrobertson.com/index.html> (5/23/2012).

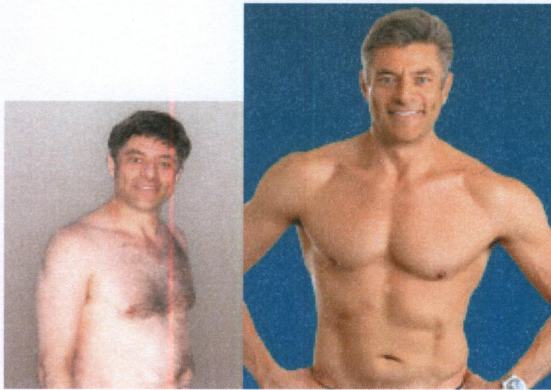
63. Rosenstein's success story appears on the Cenegenics website, and a screenshot is reproduced below:



64. Rosenstein claims that he cut his body fat in half using the Cenegenics program. Additionally, Rosenstein stated in a Cenegenics testimonial that “[s]ince being on the Cenegenics program, my energy level has increased dramatically to where it was when I was in my 30’s, and my sons in fact have trouble keeping up with me, they’re 21 and 23 years old, and they’ve said to me ‘gee dad, you look buff,’ and now they’re trying to catch up to me, as opposed to the other way around.” As previously indicated, identical before and after pictures are used on the Ageless Male websites, and the results he claimed he experienced from his involvement with the Cenegenics program are identical to the results that Defendants advertise were due to his use of Ageless Male.

65. Rosenstein also appears as a “Success Story” on promotional materials for Southwest Age Intervention Institute. The Southwest Age Intervention Institute is a center that purportedly helps men and women reverse the signs and symptoms of aging to live healthier and

more rewarding lives. Rosenstein's success story, as well as his before and after photos, are reproduced below:



**I did it for my patients and for myself.
I have more energy and feel better**

I became a patient of the age intervention program offered here at Southwest Age Intervention Institute. I had reached the point where I was feeling what I thought were the inevitable signs of ageing and needing to slow down because of fatigue and lack of energy. While I had once been able to easily do a full day of surgery and patient care, I found that it was getting a lot tougher to maintain that pace, and in my line of work I have to be at 100%, 100% of the time.

Today, I feel the way I did in my 20s and 30s. I want to be able to offer our patients the opportunity to regain the energy and vitality levels of their more youthful days. I invite you to come in and learn how SAI can change the rest of your life into the best of your life!

With hormone optimization I went from 21% to 11% body fat in six months and began to feel young again. I had energy and my mind was no longer in a fog. I could exercise and not worry about recovery and fatigue. My normal vigor and vitality returned without my being exhausted at the end of the day!

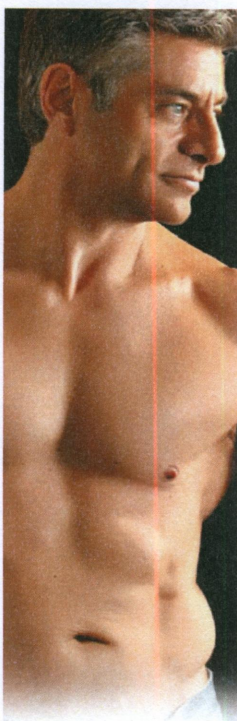
I knew then that I wanted to help others feel as I felt. Here was a great program for both men and women—I realized that youth was no longer wasted on the young and that one could age youthfully!

—Jacob Rosenstein, M.D., *Neurosurgeon*

<http://www.800ageexpert.com/success.php> (5/31/2012).

66. Rosenstein similarly claims that as a patient of the Southwest Age Intervention Institute, he cut his body fat in half and regained the energy and vitality levels of his youthful days. These are the identical results that Defendants advertise were due to his use of Ageless Male. Additionally, similar, if not identical before and after pictures are found on the Ageless Male websites.

67. Furthermore, Southwest Age Intervention Institute utilizes hormone replacement therapies that it claims will improve its clients' quality of life. The website states, "[a]t Southwest Age Intervention Institute, proper medical management of hormone levels based on each patient's individual body chemistry is a vital part of what we do. . . . At Southwest Age Intervention Institute we use Bio-identical Hormone Replacement Therapy to bring about a tremendous improvement in the quality of your life." Rosenstein's pictures appear on the webpage that promotes the use of hormone balancing and hormone replacement therapy at the Southwest Age Intervention Institute.



HORMONE BALANCING

The Secret to Better Aging for Men & Women

Tweet 0

Hormones are natural substances produced by our body that have a powerful effect on our physical, mental, sexual and emotional health. Imbalances in any one of these natural hormones—Testosterone, Estrogen, Progesterone, Thyroid, Insulin, Dihydroepiandrosterone (DHEA) and Cortisol—can alter how we feel, think and act.

Surprisingly, for many people, hormone levels start to decline in their early 30s. By age 50, on average both men and women experience a dramatic drop in hormone levels, sometimes by more than fifty percent.

In the past, we considered this loss as an inevitable part of the aging process. But today, we have the understanding and the technology to realize that replacing and balancing hormones can keep us more vital, healthier and active at every stage of life.

At Southwest Age Intervention Institute, proper medical management of hormone levels based on each patient's individual body chemistry is a vital part of what we do. We understand that balanced hormone levels can prevent premature aging and the age-related symptoms that plague many men and women in mid-life.

At Southwest Age Intervention Institute we use Bioidentical Hormone Replacement Therapy to bring about a tremendous improvement in the quality of your life. These physician-prescribed hormones, in combination with counseling on good dietary habits, daily nutrition supplements, exercise, stress reduction and good quality sleep are critical to your well being.

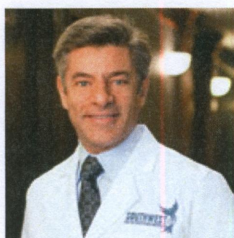
WHAT ARE BIOIDENTICAL HORMONES?

Bioidentical Hormone Replacement Therapy is specifically designed for your body and is natural replicas of the hormones found in our body—they perfectly mirror the molecular structure of our own hormones. Bioidentical hormone therapy, unlike their synthetic counterparts, is considered more natural, effective and safer.

They are produced in specialized laboratories from plants like Mexican yams and soybeans. They fit into their designated receptor sites much like a key fitting into a lock, turning some of those lost functions back on. Technically, the body can't distinguish bio-identical hormones from the ones produced by your body.

Your regimen of bioidentical hormones will be perfectly adjusted to meet your body's chemistry and biological needs.

HUMAN GROWTH HORMONE



JACOB ROSENSTEIN,
M.D.

<http://www.800ageexpert.com/hormones.php>. (5/22/2012).

68. Bioidentical hormone replacement therapy refers to the use of hormones that are identical, on a molecular level, with hormones produced by the human body. These hormones can be administered through oral pills, topical gels, and transdermal patches. In January 2008, the FDA ordered seven compounding pharmaceutical companies to stop making illegal claims about “bio-identical hormone replacement therapy (“BHRT”)” products. The FDA has classified “bio-identical” as a marketing term that implies a benefit for which there is no medical or

scientific basis.

www.fda.gov/downloads/NewsEvents/Newsroom/pressannouncements/2008/ucm116832.htm
(5/31/2012).

D. Defendants' False And Misleading Claims Are Material

69. All of Defendants' false and/or misleading claims challenged herein relate to matters that are material and important to a consumer's purchasing decision, as they concern the effectiveness of Ageless Male, the qualities of this product and the reason for which it is sold.

70. Defendants' marketing and promotional materials are intended to, and did, induce Plaintiff and members of the Class to rely upon those representations that Ageless Male was clinically proven to dramatically boost testosterone levels, was effective for its intended use, and would "fight back" against the natural aging process preventing such maladies as andropause and its symptoms, including low sex drive, mood changes, decreased energy, irritability, loss of muscle mass, and loss of focus or concentration. These representations were a substantial factor in causing Plaintiff and members of the Class to purchase Ageless Male.

71. At the time members of the Class purchased Ageless Male, they were unaware of the fact that Ageless Male is not proven effective for its intended use.

72. If members of the Class had been aware of the true facts concerning Ageless Male, they would not have purchased the product.

73. Plaintiff and members of the Class have been injured in fact and have suffered ascertainable, out of pocket losses. Plaintiff and members of the Class therefore seek a refund and/or rescission of the transaction and all further equitable and injunctive relief as provided by applicable law.

CLASS ACTION ALLEGATIONS

74. Plaintiff brings this action as a class action under Federal Rule of Civil Procedure 23 on behalf of a Class consisting of all persons in the United States who, within the relevant statute of limitations period, purchased Ageless Male (the “Class”).

75. Plaintiff reserves the right to amend or modify the Class definition with greater specificity or further division into subclasses or limitation to particular issues as discovery and the orders of this Court warrant.

76. Excluded from the Class are Defendants, the officers and directors of Defendants at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

77. The Court can define the Class and create additional subclasses as may be necessary or desirable to adjudicate common issues and claims of the Class members if, based on discovery of additional facts, the need arises.

78. Plaintiff is a member of the Class he seeks to represent.

79. The members of the Class are so numerous that their individual joinder herein is impracticable. The precise number of Class members and their identities are unknown to Plaintiff at this time but will be determined through discovery. Upon information and belief and based upon the scope of Defendants’ marketing campaign, the Class includes tens of thousands of members. Accordingly, joinder is impracticable.

80. There are numerous questions of law and fact common to the Class which predominate over any individual actions or issues, including, but not limited to:

- a. Whether Defendants violated the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*;

- b. Whether Defendants breached any express warranties made to Plaintiff and the Class;
- c. Whether Defendants breached an implied warranty of merchantability made to Plaintiff and the Class;
- d. Whether Defendants were unjustly enriched by their conduct;
- e. Whether Defendants' marketing of Ageless Male is false, misleading, and/or deceptive, and whether practices are unjust, unreasonable or unlawful;
- f. Whether the Ageless Male is clinically proven to boost testosterone; and
- g. Whether, as a result of Defendants' misconduct as alleged herein, Plaintiff and Class members are entitled to restitution, injunctive and/or monetary relief and, if so, the amount and nature of such relief.

81. Plaintiff's claims are typical of the claims of the Class in that Plaintiff and the members of the Class were exposed to Defendants' false, misleading, and deceptive marketing and promotional materials concerning Ageless Male and were subject to Defendants' unjust, unreasonable and unlawful practices. Plaintiff has no interests antagonistic to the interests of the other members of the Class.

82. Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the Class members he seeks to represent, he has retained counsel competent and experienced in prosecuting class actions, and he intends to prosecute this action vigorously.

83. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class and common issues predominate.

84. Notice of this class action can be provided to Class members by techniques and forms similar to those customarily used in other class actions, such as by published notice, or Internet notice, or first-class mail or a combination thereof, or other means deemed suitable for this Class.

85. Class certification is appropriate because Defendants have acted, or refused to act, on grounds generally applicable to the Class, making class-wide relief appropriate.

86. In addition, the class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Plaintiff and Class members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendants' liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendants' liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

COUNT I

VIOLATION OF MAGNUSON-MOSS WARRANTY ACT

(15 U.S.C. § 2301, *et seq.*)

87. Plaintiff and Class members reallege and incorporate by reference each allegation set forth above and further allege as follows.

88. Plaintiff brings this Count I individually and on behalf of the members of the Class, against Defendants.

89. Ageless Male is a consumer products as defined in 15 U.S.C. § 2301(1).

90. Ageless Male is sold at retail for more than five dollars.

91. Plaintiff and Class members are consumers as defined in 15 U.S.C. § 2301(3).

92. Defendants are suppliers and warrantors as defined in 15 U.S.C. § 2301(4) and (5).

93. In connection with the sale of Ageless Male, Defendants issued written warranties as defined in 15 U.S.C. § 2301(6), which warranted that Ageless Male is “clinically” proven to dramatically boost testosterone levels and is effective for its intended use. Moreover, Defendants claimed that use of Ageless Male would not only boots testosterone, but would in turn prevent such maladies as andropause and its symptoms, including low sex drive, mood changes, decreased energy, irritability, loss of muscle mass, and loss of focus or concentration.

94. Defendants breached these warranties because Ageless Male is not effective for its intended use and has never been proven effective by competent and reliable scientific evidence to dramatically boost testosterone levels.

95. Plaintiff provided notice of Defendants’ breach of warranties prior to filing suit.

96. By reason of Defendants’ breach of the express written warranties, Defendants violated the statutory rights owed to Plaintiff and Class members pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et. seq.*, thereby damaging Plaintiff and Class members.

97. Plaintiff and Class members were injured as a direct and proximate result of Defendants’ breach because they would not have purchased Ageless Male if the true facts had been known.

COUNT II

BREACH OF EXPRESS WARRANTY

98. Plaintiff and Class members reallege and incorporate by reference each allegation set forth above and further allege as follows.

99. Plaintiff brings this Count II individually and on behalf of the members of the Class against Defendants.

100. Defendants, as manufacturers, marketers, distributors, or sellers, expressly warranted that Ageless Male was effective and proven effective. Defendants expressly warranted through advertisements and online marketing that Ageless Male was “clinically” proven to dramatically boost testosterone levels, which would in turn prevent such maladies as andropause and its symptoms, including low sex drive, mood changes, decreased energy, irritability, loss of muscle mass, and loss of focus or concentration.

101. In fact, Ageless Male is not effective for its intended use and has never been proven effective by competent and reliable scientific evidence to dramatically boost testosterone levels.

102. Plaintiff and Class members were injured as a direct and proximate result of Defendants’ breach because they would not have purchased the Ageless Male if the true facts had been known.

103. Defendants breached their express warranty by selling a product that is not effective for its intended use and has never been proven effective by competent and reliable scientific evidence to dramatically boost testosterone levels.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

104. Plaintiff and Class members repeat and reallege each and every allegation above, as if set forth in full herein.

105. Plaintiff brings this Count III individually and on behalf of the members of the Class against Defendants.

106. Defendants, as the designer, manufacturer, marketer, distributor, and seller impliedly warranted that Ageless Male was fit for its intended purpose in that Ageless Male would function as an effective testosterone booster. Defendants did so with the intent to induce Plaintiff and members of the Class to purchase the product.

107. Defendants breached their implied warranties in the contract for the sale of Ageless Male in that Ageless Male is not, and does not contain ingredients, clinically proven to dramatically boost testosterone levels and therefore could not pass without objection in the trade under the contract description, the goods were not of fair average quality within the description, and the goods were unfit for their intended and ordinary purpose because there is no competent and reliable scientific evidence that Ageless Male is effective and dramatically boosts testosterone levels in that they did not possess testosterone boosting qualities. As a result, Plaintiffs and Class members did not receive the goods as impliedly warranted by Defendants to be merchantable.

108. In reliance upon Defendant's skill and judgment and the implied warranties discussed above, Plaintiffs and Class members purchased Ageless Male for use as a testosterone booster.

109. The Ageless Male product was not altered by Plaintiff and Class members.

110. The Ageless Male products were defective when they left the exclusive control of Defendants.

111. Defendants knew that Ageless Male would be purchased and used without additional testing for efficacy by Plaintiff and Class members.

112. Ageless Male was defectively designed and unfit for its intended purpose, and Plaintiff did not receive the goods as warranted. Had Plaintiff and the members of the Class known the true facts, they would not have purchased Ageless Male.

113. Plaintiff and Class members were injured as a direct and proximate result of Defendants' breach because they would not have purchased Ageless Male if the true facts had been known.

COUNT IV

UNJUST ENRICHMENT

114. Plaintiff and Class members incorporate by reference and re-allege each and every allegation set forth above as though fully set forth herein.

115. Plaintiff brings this Count IV individually and on behalf of the members of the Class against Defendants.

116. "The unjust enrichment claim can be made from common classwide proof." *Westways World Travel, Inc. v. AMR Corp.*, 218 F.R.D. 223, 239 (C.D. Cal. 2003) (certifying a nationwide class where plaintiffs alleged defendants were unjustly enriched through a common scheme.). "Although there are numerous permutations of the elements of the unjust enrichment cause of action in the various states, there are few real differences. In all states, the focus of an unjust enrichment claim is whether the defendant was unjustly enriched. At the core of each state's law are two fundamental elements – the defendant received a benefit from the plaintiff and it would be inequitable for the defendant to retain that benefit without compensating the

plaintiff. The focus of the inquiry is the same in each state.” *In re Mercedes-Benz Tele Aid Contract Litig.*, 257 F.R.D. 46, 58 (D.N.J. Apr. 24, 2009), quoting *Powers v. Lycoming Engines*, 245 F.R.D. 226, 231 (E.D. Pa. 2007).

117. Plaintiff and Class members conferred a benefit on Defendants by purchasing Ageless Male.

118. Defendants have been unjustly enriched in retaining the revenues derived from Class members’ purchases of Ageless Male, which retention under these circumstances is unjust and inequitable because Defendants misrepresented the facts concerning the efficacy of the product and caused Plaintiff and the Class to lose money as a result thereof.

119. Plaintiff and Class members were injured as a direct and proximate result of Defendants’ breach because they would not have purchased Ageless Male if the true facts had been known. Because Defendants’ retention of the non-gratuitous benefit conferred on them by Plaintiff and Class members is unjust and inequitable, Defendants must pay restitution to Plaintiff and Class members for their unjust enrichment, as ordered by the Court.

COUNT V

COMMON LAW FRAUD

120. Plaintiff and Class members reallege and incorporate by reference each allegation set forth above and further allege as follows.

121. Plaintiff brings this Count V individually and on behalf of the members of the Class against Defendants.

122. Defendants made false representations about Ageless Male, including representations in various advertisements that Ageless Male was “clinically” proven to dramatically boost testosterone levels and that it is effective for its intended use. Moreover, Defendants claimed that use of Ageless Male would not only boost testosterone, but would in

turn prevent such maladies as andropause and its symptoms, including low sex drive, mood changes, decreased energy, irritability, loss of muscle mass, and loss of focus or concentration. These statements were material because they are the only reasons a consumers would purchase Ageless Male.

123. These representations are false because Ageless Male is not effective for its intended use and has never been proven effective by competent and reliable scientific evidence to dramatically boost testosterone levels.

124. Plaintiff and the Class members were exposed to these false and misleading statements in numerous advertisements at the time immediately prior to their purchase of the Ageless Male.

125. Defendants made these statements with the intent to deceive Plaintiff and the Class members and induce them to purchase Ageless Male.

126. Plaintiff and the Class members reasonably relied upon the false and misleading representations in making their purchases. They had no way of knowing that Defendants' statements were false and misleading.

127. As a result of their purchases, Plaintiff and the Class members suffered damages in the amount of the purchase price of Ageless Male.

COUNT VI

VIOLATION OF NEW YORK GEN. BUS. Law § 349, *et seq.*

128. Plaintiff and Class members repeat and reallege each and every allegation above, as if set forth in full herein.

129. Plaintiff brings this Count VI individually and on behalf of the members of the Class against Defendants.

130. By the acts and conduct alleged herein, Defendants committed unfair or deceptive acts and practices in the state of New York by making the misrepresentations identified above.

131. The foregoing acts and practice were directed at consumers.

132. The foregoing deceptive acts and practices are misleading in a material way because they fundamentally misrepresent the efficacy of Ageless Male to induce consumers to purchase the product.

133. Plaintiff and members of the Class were injured as a direct and proximate result of Defendants' violation of G.B.L. § 350 because they paid for Ageless Male, which they would not have purchased had they known the true facts.

134. On behalf of himself and other members of the Class, Plaintiff seeks to enjoin the unlawful acts and practices described herein, to recover his actual damages or fifty dollars, whichever is greater, three times actual damages, and reasonable attorney's fees.

COUNT VII

VIOLATION OF NEW YORK GEN. BUS. Law § 350, *et seq.*

135. Plaintiff and Class members repeat and reallege each and every allegation above, as if set forth in full herein.

136. Plaintiff brings this Count VII individually and on behalf of the members of the Class against Defendants.

137. By the acts and conduct alleged herein, Defendants committed false advertising in the conduct of business, trade or commerce in the state of New York.

138. New York G.B.L. § 350-a defines "false advertising" as "advertising, including labeling, of a commodity, or of the kind, character, terms or conditions of any employment

opportunity if such advertising is misleading in a material respect.” The foregoing acts and practices were directed at consumers.

139. The foregoing false advertisements are misleading in a material way because they fundamentally misrepresent the efficacy of Ageless Male to induce consumers to purchase the product.

140. Plaintiff and members of the Class were injured as a direct and proximate result of Defendants’ violation of G.B.L. § 350 because they paid for Ageless Male, which they would not have purchased had they know the true facts.

141. On behalf of himself and other members of the Class, Plaintiff seeks to enjoin the unlawful acts and practices described herein, to recover his actual damages or five hundred dollars, whichever is greater, three times actual damage, and reasonable attorney’s fees.

COUNT VIII

VIOLATION OF THE CONSUMER FRAUD LAWS OF THE VARIOUS STATES

142. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

143. Plaintiff brings this Count VIII individually and on behalf of the members of the nationwide Class against Defendants in the alternative to Counts VI and VII.

144. By falsely and misleadingly claiming that Ageless Male dramatically boosts testosterone and was clinically proven to do so, and would prevent such maladies as andropause and its symptoms, including low sex drive, mood changes, decreased energy, irritability, loss of muscle mass, and loss of focus or concentration, Defendants have engaged in unfair competition or unlawful, unfair, misleading, unconscionable, or deceptive acts in violation of the state consumer statutes listed below.

145. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of ALA. CODE § 8-19-1, *et seq.*

146. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of ALASKA STAT. CODE § 45.50.471, *et seq.*

147. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of ARIZ. REV. STAT. § 44-1522, *et seq.*

148. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of ARK. CODE ANN. § 4-88-107, *et seq.*

149. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of CAL. BUS. & PROF. CODE § 17200, *et seq.*; false advertising in violation of CAL. BUS. & PROF. CODE § 17500, *et seq.*, and violations of the Consumers' Legal Remedies Act, CAL. CIV. CODE § 1780, *et seq.*

150. Defendants have engaged in unfair competition or unfair or deceptive acts or practices or have made false representations in violation of COLO. REV. STAT. § 6-1-101, *et seq.*

151. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of CONN. GEN. STAT. § 42-110b, *et seq.*

152. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of DEL. CODE ANN. tit. 6, § 2511, *et seq.*

153. Defendants have engaged in unfair competition or unfair or deceptive acts or practices or made false representations in violation of D.C. CODE ANN. § 28-3901, *et seq.*

154. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of FLA. STAT. ANN. § 501.201, *et seq.*

155. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of GA. CODE ANN. §10-1-392, *et seq.*

156. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of HAW. REV. STAT. § 480, *et seq.*

157. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of IDAHO CODE § 48-601, *et seq.*

158. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 815 ILL. COMP. STAT. 505/1, *et seq.*

159. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of IND. CODE ANN. § 24-5-0.5-1, *et seq.*

160. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of IOWA CODE §714.16, *et seq.*

161. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of KAN. STAT. § 50-623, *et seq.*

162. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of KY. REV. STAT. ANN. § 367.110, *et seq.*

163. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of LA. REV. STAT. § 51:1404, *et seq.*

164. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of ME. REV. STAT. tit. 5, § 205-A, *et seq.*

165. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of MD. CODE. ANN., COM. LAW § 13-101, *et seq.*

166. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation MASS. GEN LAWS ch. 93A, §1, *et seq.*

167. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of MICH. COMP. LAWS § 445.901, *et seq.*

168. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of MINN. STAT. § 8.31, *et seq.*

169. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of MISS. CODE ANN. § 75-24-3, *et seq.*

170. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of MO. REV. STAT. § 407.010, *et seq.*

171. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of MONT. CODE ANN. § 30-14-101, *et seq.*

172. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of NEB. REV. STAT. § 59-1601, *et seq.*

173. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of NEV. REV. STAT. 598.0903, *et seq.*

174. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.H. REV. STAT. ANN. § 358-A:1, *et seq.*

175. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.M. STAT. ANN. § 57-12-1, *et seq.*

176. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.J.S.A. § 56:8-1, *et seq.*

177. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.C. GEN. STAT. § 75-1.1, *et seq.*

178. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.D. CENT. CODE § 51-15-01, *et seq.*

179. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of the OHIO REV. CODE ANN. § 1345.01, *et seq.* and OHIO REV. CODE ANN. § 4165.01, *et seq.*

180. Defendants have engaged in unfair competition or unfair or deceptive acts or practices or made false representations in violation of OKLA. STAT. tit. 15, § 751, *et seq.*

181. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of OR. REV. STAT. § 646.605, *et seq.*

182. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 73 PA. CONS. STAT. § 201-1, *et seq.*

183. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of R.I. GEN. LAWS § 6-13.1-1, *et seq.*

184. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of S.C. CODE § 39-5-10, *et seq.*

185. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of S.D. CODIFIED LAWS § 37-24-1, *et seq.*

186. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of TENN. CODE ANN. § 47-18-101, *et seq.*

187. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of TEX. BUS. & COM. CODE ANN. § 17.41, *et seq.*

188. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of UTAH CODE. ANN. § 13-11-1, *et seq.*

189. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of VT. STAT. ANN. tit. 9, § 2451, *et seq.*

190. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of VA. CODE ANN. § 59.1-196, *et seq.*

191. Defendants have engaged in unfair competition or unfair, deceptive or fraudulent acts or practices in violation of WASH. REV. CODE § 19.86.010, *et seq.*

192. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of W. VA. CODE § 46A-6-101, *et seq.*

193. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of WIS. STAT. § 100.18, *et seq.*

194. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of WYO. STAT. ANN. § 40-12-101, *et seq.*

195. The acts, practices, and misrepresentations by Defendants described above, and Defendants' dissemination of deceptive and misleading advertising and marketing materials in connection therewith, occurring in the course of conduct involving trade or commerce, constitute unfair methods of competition and unfair or deceptive acts or practices within the meaning of each of the above-enumerated statutes, because each of these statutes generally prohibits deceptive conduct in consumer transactions. Defendants violated each of these statutes by making false and misleading statements that Ageless Male dramatically boosts testosterone and was clinically proven to do so, and would prevent such maladies as andropause and its

symptoms, including low sex drive, mood changes, decreased energy, irritability, loss of muscle mass, and loss of focus or concentration.

196. Plaintiff and class members were injured as a direct and proximate result of Defendants' breach because they would not have purchased the ageless male if the true facts had been known.

RELIEF DEMANDED

WHEREFORE Plaintiff demands judgment against each Defendant jointly and severally as follows:

- A. Determining that this action is a proper class action;
- B. Awarding compensatory damages in favor of Plaintiff and members the Class against Defendants for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- C. Awarding injunctive relief against Defendants to prevent Defendants from continuing their ongoing unfair, unconscionable and/or deceptive acts and practices;
- D. Awarding Plaintiff and members of the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- E. Awarding such other and further relief as the Court may deem just and proper.


JURY DEMAND

Plaintiff hereby demands a trial by jury of all claims and issues properly triable in this action.

Dated: June 1, 2012

Respectfully submitted,

FARUQI & FARUQI, LLP

By: 
Antonio Vozzolo (AV-8773)

Christopher Marlborough (CM 6107)
369 Lexington Avenue, 10th Floor
New York, New York 10017
Tel: (212) 983-9330
Fax: (212) 983-9331
Email: avozzolo@faruqilaw.com
cmarlborough@faruqilaw.com
Attorneys for Plaintiff